

January 28, 2011

The Honorable Tim Owens, Chairperson
Senate Committee on Judiciary
Statehouse, Room 559-S
Topeka, Kansas 66612

Dear Senator Owens:

SUBJECT: Fiscal Note for SB 7 by Senate Committee on Judiciary

In accordance with KSA 75-3715a, the following fiscal note concerning SB 7 is respectfully submitted to your committee.

SB 7 would make numerous changes to current driving under the influence (DUI) law specifically as it relates to DUI, commercial DUI, and the new crime of refusing to submit to a DUI test. The bill would amend DUI law by changing the time available to measure a person's blood or breath from two hours to three hours from the time of operating a vehicle. The bill would also amend a first DUI conviction from a class B, nonperson misdemeanor to a class A, nonperson misdemeanor; raise the maximum sentence from no more than six months to no more than 12; and raise the maximum fine from \$1,000 to \$2,500. The maximum fine for a second DUI conviction would be raised from \$1,500 to \$2,500. A third DUI conviction would be separated into two classifications: a class A, nonperson misdemeanor if the offender does not have a prior conviction within the previous ten years; and a nonperson felony if the offender has a prior conviction within the previous ten years. A fourth or subsequent DUI conviction would now be classified as a severity level 7, nonperson felony. The bill would require that when determining whether a conviction is a first, second, third, fourth, or subsequent conviction, only DUI convictions or diversions occurring on or after July 1, 1996 may be taken into account. Courts may also consider any commercial DUI or test refusal convictions that occur during an offender's lifetime. The bill would make several amendments to diversion requirements and considerations.

SB 7 would also amend commercial DUI laws. The time available to measure a person's blood or breath would be increased from two hours to three hours from the time of operating a vehicle. Penalties for first commercial DUI convictions would be raised from class B, nonperson misdemeanors to class A, nonperson misdemeanors, and the maximum sentence would be increased from six months to one year. The maximum fine for a first commercial DUI conviction would increase to \$1,500. The maximum fine for a second conviction would be increased to \$2,500. A third or subsequent conviction would be a severity level 7, nonperson felony.

The bill creates the new crime of refusing to submit to a test to determine the presence of alcohol or drugs. First or second convictions of the new crime would be class A misdemeanors with maximum sentences of one year and maximum fines of \$1,500 and \$2,500, respectively. A third or subsequent conviction of test refusal would be a severity level 7, nonperson felony.

Cities would not be permitted to enact DUI, commercial DUI, or test refusal ordinances unless municipal law enforcement agencies report arrests to KBI as required by law and municipal courts use the standardized risk assessment instrument (the Level of Services Inventory-Revised or LSI-R) approved by the Kansas Sentencing Commission and the standardized substance abuse evaluation approved by the Department of Social and Rehabilitation Services (SRS). Municipal courts must be able to use the assessments and evaluations for case dispositions, have the ability to supervise offenders accordingly, and report case dispositions to the KBI. By July 1, 2012 all municipal courts must be able to submit case dispositions electronically to the KBI. Prosecutors of DUI offenders and courts must request and receive from the Division of Vehicles an offender's record of all prior convictions for violations of Kansas motor vehicle laws and a criminal history from the KBI central repository. All felony DUI cases must be filed in district courts instead of municipal courts.

SB 7 would mandate that alcohol and drug evaluations be conducted by providers who have a DUI specialty license approved by the Department of Social and Rehabilitation Services (SRS). All assessment and reporting standards would be determined by the Department. The cost of the evaluation, which must not exceed \$150, would be paid by the offender to the provider at the time of service.

The bill would also amend the application and duration of suspending a DUI offender's driving privileges and restricting the offender's driving privileges to driving ignition interlock device equipped vehicles in cases where an offender has refused or failed a test. If requested by an offender who was convicted prior to the amendment, the suspension and restriction of driving privileges provisions could be applied retroactively provided that the offender submit an application and fee of \$59, which would be credited to the Department of Revenue Division of Motor Vehicles Operating Fund. If an offender is sentenced to a state correctional facility, any period of incarceration would not count towards the offender's suspension or restriction period. All requirements of suspensions and restrictions involving ignition interlock devices, which must be approved by the Department of Health and Environment, would be administered by the Department of Revenue Division of Motor Vehicles. Any evidence of tampering with the device would extend the ignition interlock restriction period. Offenders who have had their licenses suspended would be permitted to request administrative hearings, which would be subject to a \$50 fee for administrative costs incurred by the Division of Motor Vehicles.

The Kansas Parole Board may release inmates who have been convicted of DUI, commercial DUI, and refusing to submit to a test provided that they have completed required treatment programs as determined by the Secretary of Corrections.

The new crime of aggravated battery while driving under the influence would be created under SB 7. The new crime would be classified as a severity level 5, person felony for cases in

which the offender has causes great bodily harm to a victim and a severity level 7, person felony for cases in which the offender causes bodily harm to a victim.

The bill would permit expungement of convictions or diversions for a DUI in district court when ten or more years have elapsed since the sentence or terms of the diversion agreement were satisfied. The expungement may still be considered as a prior conviction when determining the sentence for a conviction for any subsequent crime. Also, special sentencing rules would be amended by making convictions for felony DUI, commercial DUI, and test refusal presumptive imprisonment. District courts would be prohibited from imposing downward dispositional or downward durational departure sentences.

For the purposes of presenting the fiscal effect for SB 7, costs have been divided into two areas: prison bed costs, which would be indeterminate because of various potential outcomes; and all other costs, which are summarized with specific figures in the table below.

Prison Bed Costs

Under three different scenarios, the Kansas Sentencing Commission estimates that passage of SB 7 would result in an increase of 775, 1,019, and 1,257 adult prison beds in FY 2012 and an increase of 1,456, 1,803, and 2,210 adult prison beds by FY 2021. Each scenario assumes 25.0, 50.0 and 75.0 percent, respectively, of offenders who violate the amended DUI laws would serve their entire prison terms. Currently, the number of male inmates exceeds the available bed capacity of 8,259, and based upon the Kansas Sentencing Commission projections, it is estimated that at the end of FY 2011 and FY 2012, the number of male inmates will exceed available capacity by 235 beds and 394 beds, respectively. To address capacity issues, the Governor's recommended FY 2012 budget includes \$2.5 million for contract prison beds. If it is determined that facility construction is necessary, the Department of Corrections has identified two capacity expansion projects: two high medium security housing units at El Dorado Correctional Facility that would provide 512 beds with a construction cost of \$22,687,232 (\$44,311 per bed X 512) and operating costs of \$9,339,904 (\$18,242 per bed X 512); and one minimum security housing unit at Ellsworth Correctional Facility that would provide 100 beds with a construction cost of \$5,935,000 (\$59,350 per bed X 100) and operating costs of \$1,832,000 (\$18,320 per bed X 100).

Any capacity needed beyond the options outlined above could require additional contract or construction costs. The actual construction costs would depend upon the security level of the beds to be constructed and when construction is actually undertaken, while the actual operating costs would depend upon the base salary amounts, fringe benefit rates, per meal costs, per capita health care costs, and other cost factors applicable at the time the additional capacity is occupied.

All Other Costs

| Estimated State Fiscal Effect | | | | |
|-------------------------------|----------------|----------------------|----------------|----------------------|
| | FY 2011 SGF | FY 2011 All Funds | FY 2012 SGF | FY 2012 All Funds |
| Revenue | -- | -- | -- | \$713,000 |
| Expenditure | -- | -- | \$11,459,076 | \$11,459,076 |
| FTE Pos. | -- | -- | -- | 133.40 |

The Department of Corrections estimates that enactment of SB 7 would require additional State General Fund resources of totaling \$3,056,463 and 50.00 FTE positions for FY 2012. The largest source of these expenses would be from adding 46.00 parole officer FTE positions with salary and wages costs of \$2,192,000 and \$270,000 for 15 vehicles. The officers would be needed to perform the required post-release supervision of additional offenders. Of the remaining sum, \$182,597 would be for 4.00 FTE positions to process higher volumes of journal entries, parole forms, and DUI sentence computations; and \$411,865 would be for programming and ongoing operating costs.

According to the Office of Judicial Administration, courts would require a total of \$3,882,872 from the State General Fund and 68.40 FTE positions for additional costs related to the workloads required under SB 7. It is projected that the bill would add at least 4,832 new cases to district courts including 3,337 cases from an estimate that assumes only cities of the first class would be able to adhere to the new reporting, evaluation, and assessment requirements and choose to continue to prosecute DUI cases; 818 cases that are estimated to be heard as a result of the bill's provision requiring all felony DUI cases to be filed in district courts; and 677 cases from the new crimes created by the bill. The Office also estimates approximately 5,000 petitions for expungement would be filed. The cost breakdown by position class would be \$517,105 for 14.90 trial clerk FTE positions (14.90 positions X \$34,705 cost per position); \$994,458 for 6.00 judge FTE positions (6.00 positions X \$165,743 cost per position); \$342,606 for 6.00 court reporter FTE positions (6.00 positions X \$57,101 per position); \$244,650 for 6.00 administrative assistant FTE positions (6.00 positions X 40,775 per position); and \$1,784,053 for 35.50 court services officer FTE positions (35.50 X \$50,255 per position).

The Board of Indigents Defense Services estimates that the agency would require \$1,206,450 in additional State General Fund dollars for FY 2012 to implement SB 7. The Board projects that the agency would assume 2,193 additional cases. With an average per public defender caseload of 166 cases, the Board estimates that \$877,500 would be needed to hire 13.50 attorney FTE positions (13.50 positions X \$65,000 cost per position). Because the bill requires that a drug and alcohol evaluation be conducted in every case, the Board also estimates that \$328,950 would be needed for the tests (2,193 cases X \$150 per evaluation)

KBI expects that SB 7 would require an expansion of the central repository and the creation of several automated data exchanges between KBI and prosecutors, courts, and the

Division of Vehicles. To enhance the capabilities of the central repository, KBI estimates that it would need \$2,875,000 from the State General Fund in FY 2012 for one-time IT costs. Included in this figure is \$175,000 to develop detailed system requirements and designs; \$300,000 to develop a DUI portal; \$325,000 to build the required interfaces; \$650,000 to expand the central repository; \$375,000 to develop notification and management functions; \$375,000 to link to document imaging systems; \$450,000 for project management, testing, documentation, and training; and \$225,000 for hardware and software.

County jails could see savings from the provision in the bill that requires incarceration in a state correctional facility of offenders who have been convicted of fourth or subsequent DUI violations. Under current law, offenders convicted of DUI can remain in the county system unless ordered to a state correctional facility for treatment programs. Upon completion of the program, offenders are eligible to be returned to counties. However, any savings realized from the amended provision would be offset by additional costs from offenders who are committed to county jails for the new crimes created under the bill. Because it is difficult to estimate the net effect of offenders for county jails, the Kansas Association of Counties is unable to estimate the precise savings or costs from SB 7. Some municipalities could see court cost reductions due to decreases in DUI caseloads from the requirement that felony DUI cases be filed in district courts. Municipalities could experience further caseload cost reductions by forgoing DUI case prosecutions because of an inability to meet the KBI reporting requirements; to utilize the standardized risk assessment instrument and the standardized substance abuse evaluation; and to properly supervise offenders. While these costs may be eliminated, any revenue from filing fees and fines would also be eliminated. The League of Kansas Municipalities is unable to determine the precise fiscal effect for cities because it is unknown how many cities would be able to meet the requirements of the bill.

The Department of Social and Rehabilitation Services (SRS) believes that the agency would incur additional costs totaling \$366,991 in FY 2012 from the State General Fund from increases in the number of offenders who would require substance abuse treatment services and from licensing DUI specialty providers. SRS estimates that an additional 225 individuals would require treatment at a cost of \$176,045. Moreover, the licensing of DUI specialty providers would require \$190,946 for the salary and wages of 1.00 Public Service Executive I FTE position and associated administrative, information technology, travel, and training expenses.

According to the Department of Revenue, the new application fee of \$59 and the new administrative hearing fee of \$50 would generate \$713,000 in revenue for the Vehicle Operating Fund. This estimate assumes that 7,000 applications would be received and 6,000 hearings would be conducted. The Department would also incur costs of \$20,000 to provide all state law enforcement agencies with new forms and \$10,800 to modify the existing driver's license system.

It is estimated by the Kansas Department of Health and Environment (KDHE) that the Breath Alcohol Program would require additional State General Fund resources totaling \$40,500 for the provision in the bill that would require KDHE to approve all ignition interlock devices. The amount includes salary and wages for 0.50 Laboratory Improvement Specialist FTE position

The Honorable Tim Owens, Chairperson

January 28, 2011

Page 6—Fisc_Note_Sb7

and \$10,500 for travel, equipment, training, and database revision expenses. Any fiscal effect associated with SB 7 is not reflected in *The FY 2012 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven J. Anderson", written in a cursive style.

Steven J. Anderson, CPA, MBA
Director of the Budget

cc: Brenda Harmon, Sentencing
Jeremy Barclay, KDOC
Linda Durand, KBI
Melissa Wangemann, KS Association of Counties
Larry Baer, League of KS Municipalities
Steve Neske, Revenue
Mary Rinehart, Judiciary
Marie McNeal, Parole Board
Dan Lewien, SRS
Pat Kuester, KDHE